

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

Our current franchise began on October 7, 1991, and expires on December 6, 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, negotiations with the current provider have been initiated, but are currently stalled

because of a pending transfer of the franchise to a new provider arising from Adelphia's bankruptcy.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. [III.3.10] *(Please note: Numbers in brackets throughout this document are references to paragraphs in the existing contract.)* No customer shall be refused cable service arbitrarily.

Our franchise requires that the cable operator currently provide service to areas of our community as follows: Grantee is authorized to extend the Cable System as necessary, as desirable, or as required in Contract, [III.3.10b]: The Cable System shall provide the extension at no extra cost ... if the requested line extension shall pass a sufficient number of dwelling units so as to yield an average "homes-per-mile" count of ... (25), or if the Cable System has received ... (15) verified customer orders within said one mile extension. Approximately 20% of the town is not served. In some cases, not-served areas do not meet the density requirements.

Our franchise contains a "most-favored-nations" provision [II.2.4] which states the following: In the event the Franchising Authority enters into a franchise permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a Cable System or providing Cable Services to any part of the Franchise Area which contains terms more favorable to such person or entity in any regard than similar provisions of this Agreement then this Franchise shall be deemed amended as of the effective date of the other franchise, permit, license, authorization or other agreement, so as to give the Grantee the benefit of any such more favorable terms.

Our franchise contains the following insurance and bonding requirements: [V.5.1] Insurance Requirements. General Comprehensive Liability Insurance in the amount of \$500,000 for bodily injuries (including accidental death) to anyone person and be subject to the same limit for each person on account of anyone occurrence, and Property Damage Liability Insurance in an amount not less than \$500,000 resulting from any one occurrence. [V.5.2] Indemnification. The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs. [V.5.3] Bonds and Other Security. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition for being awarded the Franchise or continuing its existence.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: [IV.4.1] Testing for Compliance. The franchising authority may perform technical tests ... to determine ... compliance with the terms. [IV.4.2] Books and Records. Franchising Authority may review books and records... . [VI.6.1] Notice of Violation, [VI.6.2] Grantee's Right to Cure or Respond, [VI.6.3] Public Hearing, [VI.6.4] Enforcement.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Contract contains [VIII.8.2] Preemption and [VIII.8.6] Separability clauses.

Competitive Cable Systems

Our community

- has never been approached by a competitive provider to provide service.
- has not denied any provider the opportunity to serve in our community.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in Sunapee, NH. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Sunapee, New Hampshire, therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

By:

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